IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7613 OF 2007

Shri Bhagchand B.Agarwal ...Petitioners
Versus
M/s.Ansh Properties Private ltd ....Respondents

WRIT PETITION NO. 7666 OF 2007

Shri Rajaram Dhulichand Agarwal ...Petitioners
Versus
M/s.Ansh Properties Private ltd ....Respondents

WRIT PETITION NO. 7671 OF 2007

Shri Vasudev Khachermal Agarwal
and anr. ...Petitioners
Versus
M/s.Ansh Properties Private ltd ....Respondents

Mr.Dhakephalkar, Sr.Adv i/by. M.J. Jamdar for the petitioners.

V.V.Kale for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

13th December, 2007.

P.C. :

1. These are three Summons for Judgment upon which an order was passed by the Trial Court granting

conditional leave to defend to the petitioners who are original defendants in the summary suit.

2. The respondent plaintiff invoked the jurisdiction of the Trial Court under Order 37 of the Code of Civil Procedure by instituting the subject suit on the basis that the cheques issued in repayment of the amount have been dishonoured. Thus,these are summary suits on the basis of dishonoured cheques.

3. After the procedure was complied with, Summon for Judgments were taken out and duly served on the petitioners who filed their reply-affidavits and sought leave to defend.

4. The Summons for Judgments/Applications for leave to defend are disposed off by the impugned orders granting conditional leave to the petitioners to defend the suit. The conditional leave is on deposit of the cheque amount.

5. Mr.Dhakephalkar, learned Senior Counsel appearing in Writ Petition No. 7666 of 2007 and 7671

of 2007 urges that the impugned orders are ex-facie erroneous and contrary to law. In the impugned order, the specific plea that was raised by the petitioners has been brushed aside. That plea was based upon orders of competent court in proceedings under Section 138 of the Negotiable Instrument Act wherein the Learned Magistrate has held that there is no consideration, inasmuch as, the proof of any debt or legally enforceable liability is not produced.

6. The further submission is that the judgment will have a bearing on the issues and the learned judge could not have therefore held that the said judgment cannot be looked into for deciding the question of granting leave to defend. He submits that the very same cheques and the very same transaction was subject matter of criminal complaints. In such circumstances, overlooking that judgment, so also, brushing aside the plea of limitation , the impugned judgment has been rendered. He submits that the defence is not moonshine or vexatious and frivolous. In such circumstances having not found the defence to be totally moonshine, the impugned judgment could not have been rendered.

7. While supporting the impugned judgment, the Learned Counsel appearing for the respondent/plaintiff submits that the complaint before the Criminal Court was under Section 138 and 420 of the IPC. Further, he relies upon the settled principle that the findings in the criminal case would not bind the court trying a summary suit at this stage. That apart, an Appeal is preferred admittedly against the judgment of the criminal court and the same is pending.

8. Having perused the subject petitions with their annexures including the impugned order, in my view, the Learned Judge was right in relying on prima-facie circumstances. Firstly, the Leaned Judge has relied upon the fact that the cheques have been signed by the present petitioners and they do not dispute their signatures thereon. That such cheques were handed in and dishonoured by the bankers is prima-facie undisputed. Further, the Learned Judge has relied upon the fact that suit notice was issued and even prior to the proceedings under Section 138, the notices were issued but the stand as is taken before

the criminal court or before the Trial Court in the Civil cases has not been taken. The learned Judge in the impugned orders at paras 6, 9 and 10 has assigned cogent and satisfactory reasons and has observed that prima-facie the presumption under Section 118 of the Negotiable Instrument Act would hold good and it is not as if the petitioners are deprived of any opportunity to defend.

9. To my mind, however, the suit claim in each of these suits is Rs.30 lacs i.e. cheque amount itself. While it is true that interest is also claimed, but the principal amount and cheque amount is Rs.30 lacs, the Learned Judge while taking note of the fact that there is some reference to the transaction in the criminal proceedings, should have reduced the quantum. In my view, considering the totality of facts and the issue as to whether criminal case and the findings therein, have some bearing or not being raised, an opportunity to defend needs to be granted to the petitioners, but the amount is required to be reduced. The version is that the amounts were lent and advanced in cash. It is in these circumstances, that I am of the opinion that

the following order would meet the ends of justice.

(a) With regard to Writ Petition No. 7613 of 2007, the petitioner to deposit Rs.7.5 lacs.

(b) With regard to Writ Petition No. 7666 of 2007, the petitioner to deposit Rs.20 lacs.

(c) With regard to Writ Petition NO. 7671 of 2007, the petitioner to deposit Rs.50 lacs.

(d) The amounts to be deposited in the Trial Court within a period of three months from today.

10. Needless to state that if the amounts are deposited, then the petitioners will have leave to defend in each of these suits and thereupon their Written Statement be accepted on file. Needless to further add, that if there is default, then the suit stands decreed in terms of Order 37. Thereafter all consequences in law shall follow. If the amounts are deposited, the Trial Court to initially invest them for

a period of 24 months and thereafter to abide by such further directions and orders. Petitions disposed off.

sd/-

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